

From: Philip I. Long
To: Microsoft ATR
Date: 1/28/02 2:15pm
Subject: Microsoft Settlement

As I'm sure many have pointed out, the current settlement is deficient for many reasons. I would like try to summarize the most important issues as I see them:

Microsoft was found to be a monopolist due to the applications barrier to entry. Microsoft has shown itself very adept at leveraging it's desktop monopoly to creating barriers to entry, as well as defending that desktop monopoly. Therefore an effective settlement must take into account that the monopolist is strong, smart, unrepentant, and resistant to any measures that diminish it's control.

The necessary and sufficient remedy to a monopolist is the possibility for competition in this case, several things would be helpful to allow this to occur:

1) Microsoft must lack the ability to use intellectual property protection (patents, trade secrets, etc.) to prevent _any_ entity (company, open source coalition, etc.) to create and distribute (in any way they choose) their own implementation of Microsoft functionality in any of their products. In other words, they must not be allowed any means to stop another entity from creating and distributing their own implementation of anything they want.

2) Microsoft must expose the functional specifications of all of their products so that others could implement them. This includes protocols, file formats, APIs, etc. It should also include all information it's own developers have regarding future directions.

I should emphasize that I believe that Microsoft has a right to keep secret their own implementation. Requiring the monopolist to publish the source code to all of their software (without granting the license to copy or compile it) would be effective, but would go too far in my opinion.

3) Microsoft should be prohibited from using their PC desktop monopoly to promote (in any way) other business initiatives. Eastman Kodak's experience with their photo software is telling cautionary tale on this point. As is AOL's/Real's struggles with the MS media player. In particular, the control Microsoft aims to obtain with passport is in need of very close scrutiny. Any effective settlement should prevent the monopolist from approaching these or other initiatives in this manner.

4) Any settlement should prohibit Microsoft from taking any action that discourages alternative desktop operating system adoption. A

particularly egregious examples is the rumored OEM license agreement prohibiting the ability to boot to other operating systems if a Microsoft operating system is also present. This works to prevent Dell, Gateway, etc. from giving the public an option to have a PC that would multiboot BE, Linux, etc. in addition to windows. Clearly this helps the monopolist maintain it's monopoly, but hurts consumers. Another example would be discontinuing existing support of on alternative platforms. Microsoft should be prohibited from, for example, releasing windows versions of MS Office without simultaneously releasing a Mac version. I would not go so far as to say that they should be forced to release a Linux version of Office, but that would be nice (and I'd buy it if they did even at full retail of \$500 or whatever they are charging these days).

5) Because the harm they cause is hidden in secret agreements, Microsoft should be prohibited from keeping secret any contracts they enter into. They should all be available for public review.

I believe that Microsoft would balk at any settlement that effectively addressed any of these points. That they object should not be of any concern to the public or justice because they benefit from intellectual property laws (cf their BSA campaign). As they have built their corporation on the benefit of these laws and have been found to have gone too far and become a monopoly, they must be subject to measures that could not be fairly applied to an entity that had not violated the law to the detriment of consumers. I do not expect them to take kindly to the notion that they must compete on price and quality alone, but it would be of great benefit to consumers, innovation, and the global economy if they had to.

I urge the Department of Justice to ensure that any settlement effectively address these concerns.

Thank You,

Philip Long
373 Daniels Rd.
Barboursville, VA 22923-2808

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Phil Long
Lead Software Applications Development Engineer, The MITRE Corporation's
Center for Advanced Aviation System Development
Voice: (703) 883-5810 Fax: (703) 883-1367

